

Execution of Foreign Judgments in Cases of Concurrent Jurisdiction in the UAE Pursuant to International Treaties

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These treaties simplify the judicial process related to disputes persons and/or companies of Member States and the process of executing judgments obtained in a Member State.

One of the benefits of such treaties and the focus of this article is the ability in the UAE to execute a foreign judgment received in a Member State despite a UAE court having concurrent jurisdiction of the underlying matter.

Under the Civil Procedure Code ("the Code") the UAE does not allow execution of judgments obtained from other countries if a UAE court also has jurisdiction over the matter regardless if the UAE court exercised that jurisdiction or not. (Civil Procedure Code, Art. 235 (2), Fed. Dec. 11 of 1992) It is important to note that, the Code also applies this restriction to Arbitration awards, however, this article will not deal with those due to the existence of different treaties for the execution of Arbitration awards.

The courts are stringent in its application, whereby jurisdiction clauses of contracts are often of no consequence where the UAE courts have found concurrent jurisdiction. By way of example, the Dubai Court of Cassation ruled that two parties to a contract remained subject to UAE jurisdiction despite having agreed to UK jurisdiction for any dispute arising under the relevant contract, citing the fact that the products, being the subject matter of the contract, were delivered in the UAE. (Dubai Court of Cassation, 10/1999) In fact, the Court has gone so far as to say that as a matter of public policy UAE courts must not waive their jurisdiction in instances in which it has concurrent with a foreign court. (Dubai Court of Cassation, 325/2004).

This protectionist policy is waived however with the applicability of international treaties. The Code also provides, in the same chapter: "The rules laid down in the foregoing articles shall be without prejudice to the provisions of conventions between the UAE and other countries in this regard." (Civil Procedure Code, Art. 238, Fed. Dec. 11 of 1992). Thus, whenever there is an international treaty that the UAE is party to and the treaty details rules for the execution of judgments between the parties to the treaty, the rules of the treaty will supersede the relevant rules of the Code (mainly 235-237).

Facts

One of the cases from the Dubai Court of Cassation which illustrate the application of these rules concerns a divorce judgment ("Judgment") that was granted in a Court in Beirut, Lebanon. The wife ("Petitioner") petitioned the Court of First Instance in Dubai for execution of the Judgment which granted her custody of their infant child, who was at the time less than a year old. The husband ("Respondent") responded by claiming that a UAE Court has jurisdiction over the underlying matter as he is a resident of Dubai and the Petitioner was residing with him in Dubai prior to the divorce.

Procedural History

The Court of First Instance rejected the execution of the Judgment reasoning that since the Courts of the

UAE have jurisdiction over the underlying matter, a foreign judgment should not be executed. On appeal the Court of Appeals overturned the rejection and the Respondent appealed to the Court of Cassation.

Analysis of the Court of Cassation

Citing Article 238 of the Code, the Dubai Court of Cassation reasoned that because the UAE and Lebanon are both parties to The Riyadh Arab Convention on Judicial Cooperation Treaty (“the Riyadh Treaty”), the treaty’s provisions establishing rules for execution of judgments between contracting countries would be applicable.

The Riyadh Treaty provides that “recognition of the judgment shall be rejected” in a number of instances such as violation of Islamic Sharia Law, the constitution of the country, lack of service, and other restriction listed in Article 30 of the Riyadh Treaty. However, the two relevant of these restrictions, which the Court found to not have been violated by this judgment, are:

- If a final judgment was issued in one Member State relating to the same underlying claim or a final judgment from another Member State relating to the same underlying claim was executed in it, any other final judgments relating to the same underlying claim from a third Member State may not be executed.

(Ex. If a final judgment was issued in Yemen and it is sought to be executed in UAE, it will only be executed if there is no final judgment related to the same matter in the UAE and the UAE did not previously execute a third country’s final judgment regarding the same matter.)

- If a court within one Member State has concurrent jurisdiction over a matter with another court in another Member State, and a judgment in the second State is sought to be executed in the first State, there must not be a legal proceeding regarding the matter filed in a court in the first State prior to the one in which the judgment was issued.

(Ex. If a final judgment was issued in Tunisia and it is sought to be executed in UAE, and a UAE court also has jurisdiction over the same underlying matter, the UAE court must execute the judgment unless a hearing in the UAE regarding the matter was initiated prior to the one in Tunisia.)

Conclusion

The Court reasoned that despite the Courts of UAE having concurrent jurisdiction over the matter, since the Judgment was issued prior to the dispute being raised in the UAE, and it did not violate any of the other provisions in Article 30 of the Riyadh Treaty, it should be executed. (Dubai Court of Cassation, 5/2004)

Practice Note

In light of the above, it is critical to review the relevant international treaties before initiating a legal action that is intended to be executed in the UAE. Failure to review these treaties could render a final judgment obtained useless, as it will not be executed in the UAE if a UAE court is found to have concurrent jurisdiction. The Riyadh Treaty, as explained above, provides instances where concurrent jurisdiction would be waived by a UAE court. The UAE has similar provisions in Judicial Cooperation treaties with France (Ch.5, Article 13 – Dec. 31 of 1992), India (Article XX – Dec. 33 of 2000), Pakistan (Article 16 – Dec. 12 of 2005), Afghanistan (Article 21 – Dec. 23 of 2009), Azerbaijan (Article 21 – Dec. 37 of 2007), Armenia (Article 16 of Part III – Dec. 26 of 2003) and Egypt (Article 31 – Dec. 83 of 2000)